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 JEFFREY SIMONEK

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

<p>JEFFREY SIMONEK,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>CITY OF EL SEGUNDO; EL SEGUNDO POLICE DEPARTMENT, MITCH TAVERA, Chief of Police of the El Segundo Police Department; ERIC ATKINSON; JANET GARZA; RAY GARCIA; JEFFREY HUMPHREY; GREG BURNER; KELLY BURNER; BRIAN FLAD- HAMMER; DAYNA FLADHAMMER and DOES 1 through 10, inclusive,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No.: 2:15-cv-09190-JAK-AS</p> <p>FIRST AMENDED COMPLAINT FOR DAMAGES</p> <ol style="list-style-type: none"> 1. Violation of Civil Rights (42 U.S.C. § 1983) 2. <i>Monell</i> Claim-Failure to Train, Supervise, Unconstitutional Custom, Practice or Policy (42 U.S.C. § 1983) 3. Conspiracy to Violate Civil Rights- Police Defendants and Others (42 U.S.C. § 1985(2) (3)) 4. Conspiracy to Violate Civil Rights- Citizen Defendants - Burners 5. Malicious Prosecution - Fladhammers 6. Intentional Infliction of Emotional Distress - Fladhammers 7. Conspiracy to Violate Civil Rights- Citizen Defendants - Fladhammers <p>DEMAND FOR JURY</p>

COMPLAINT FOR DAMAGES

1 them were individuals and employees of the City of El Segundo (“CITY”) and the
2 El Segundo Police Department (“ESPD”). Defendant TAVERA is and was at all
3 relevant times, the highest ranking law enforcement policymaker for CITY. These
4 defendants, including TAVERA may sometimes be referred to as “INDIVIDUAL
5 POLICE DEFENDANTS”.

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8 5. Defendant CITY OF EL SEGUNDO (“CITY”) is and was at all times
9 mentioned herein a public entity and an incorporated city duly authorized and
10 existing as such in and under the laws of the State of California. At all times
11 mentioned herein, Defendant CITY possessed the power and authority to adopt
12 policies and prescribe rules, regulations and practices affecting the operation of
13 Defendant El Segundo Police Department, their other operations, and subdivisions
14 presently unidentified to Plaintiff, their tactics, training and investigation, methods,
15 practices, customs and usages related to internal investigations, personnel
16 supervision and records maintenance, and powers of arrest.

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20 6. Prior to August 2012, defendant CITY established and operated the El
21 Segundo Police Department to investigate allegations of criminal activity in the
22 city. CITY assigned personnel to act as investigating officers, detectives,
23 supervising officers, and Chief of Police. Defendant CITY failed to train persons
24 so assigned and failed to provide supervision to persons so assigned so as to
25 protect citizens from false accusations, incarceration, and prosecution and ensuring
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COMPLAINT FOR DAMAGES

1 protection of their constitutional rights. At all times relevant hereto, defendant
2 CITY assigned persons as investigating officers, as detectives and as supervising
3 officers up to the Chief of Police. The supervisors and Chief personally
4 participated in the investigation of Plaintiff and other acts alleged herein below.
5 Defendant CITY failed to train personnel, including defendant officers, their
6 supervising officers, sergeants, lieutenants and the Chief of Police in the
7 appropriate investigation, procedures and practices for handling and interviewing
8 witnesses and other persons with information in cases alleging the sexual abuse of
9 children, including allegations against Plaintiff.
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13 Defendant CITY adopted and ratified policies, customs and practices in
14 place at the El Segundo Police Department as implemented and executed by the
15 INDIVIDUAL POLICE DEFENDANTS.
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17 7. At all times alleged herein, Defendant KELLY BURNER (“KELLY
18 B.”) is and was an individual, and the mother of Center Street Elementary School
19 student Ethan B. (a minor whose last name shall not be referred to herein) and
20 spouse of GREG BURNER (“GREG B.”).
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23 8. At all times alleged herein, Defendant GREG BURNER. is and was
24 an individual, and the father of Center Street Elementary School student Ethan B.
25 and spouse of KELLY B.
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COMPLAINT FOR DAMAGES

1 9. At all times alleged herein, Defendant BRIAN FLADHAMMER
2 ("BRIAN F.") is and was an individual, and the father of Tommy F. (a minor
3 whose last name shall not be referred to herein), a camper at Painted Turtle Camp.
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5 10. At all times alleged herein, Defendant DAYNA FLADHAMMER
6 ("DAYNA F.") is and was an individual, and the mother of Tommy F., a camper at
7 Painted Turtle Camp.
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9 11. Plaintiff is informed and believes and thereon alleges that each of the
10 Defendants designated as a DOE is intentionally and negligently responsible in for
11 the events referred to herein, and thereby proximately caused injuries to Plaintiff.
12 The true names and capacities of DOES 1 through 10, inclusive, and each of them,
13 are not now known to Plaintiff, who therefore sues said Defendants by such
14 fictitious names, and will be added to this action when their true names and
15 capacities have been discovered.
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19 12. At all times alleged herein, each of the defendants was the agent and
20 employee of each of the other defendants, acting in the course and scope of his/her
21 agency and employment, and with the consent and ratification of his/her principal
22 and employer.
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24 13. Each of the defendants performed the acts and omissions, hereinafter
25 alleged, in bad faith, with reckless indifference to Plaintiff's clearly established
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COMPLAINT FOR DAMAGES

1 constitutional rights under state and federal constitutional law, and with knowledge
2 that his/her conduct violated clearly established law.

3 4 **STATEMENT OF FACTS**

5 **A. Introduction**

6 14. On October 27, 2015, a jury in Los Angeles Superior Court,
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8 Department 103, Honorable Curtis Rappe, acquitted Plaintiff JEFFREY
9 SIMONEK of all counts following the indictment of December 13, 2013, that
10 charged him with 20 counts of lewd acts on 13 different children (violations of
11 Penal Code Section 288(a)). The acts were alleged to have occurred at Center
12 Street Elementary School in El Segundo (9 boys), at Walton's Grizzly Lodge in
13 Lake Tahoe, (2 boys), and at Painted Turtle Camp in Lake Hughes, (2 boys) The
14 jury acquitted Plaintiff after deliberating six hours, following a six week trial.
15 Plaintiff was a first year elementary school teacher. He had no prior criminal
16 history. He remained incarcerated in the Los Angeles County Jail from the date of
17 his arrest on November 26, 2013 until he was acquitted on October 27, 2015.
18 During approximately two years of incarceration, the Los Angeles County Sheriff's
19 Department classified Plaintiff as a pedophile who victimized young boys.
20 Plaintiff suffered harm while held in jail on 20 million dollar bail.

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24 15. Plaintiff was employed at Center Street Elementary School in El
25 Segundo, teaching 5th grade during the 2011-2012 school year. He had begun
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COMPLAINT FOR DAMAGES

1 working at that school as a teacher's aide in 2007. Plaintiff was never informed of
2 any complaints that he had committed any lewd act(s). Plaintiff at all times
3 followed the customs and practices of his mentor teachers and senior colleagues as
4 they instructed him.
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6 16. On or about August 1, 2012, El Segundo School District offered
7 Plaintiff a contract to teach his second year (2012-2013). On that same date, an
8 anonymous complaint was lodged with the Department of Children and Family
9 Services ("DCFS Complaint") against Plaintiff. It was later discovered that two of
10 his colleagues had filed that complaint.
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13 17. 41 Witnesses testified at the grand jury proceeding held in November
14 2013. In September, 2015 during Plaintiff's criminal trial, INDIVIDUAL POLICE
15 DEFENDANTS divulged an archive of secret recordings of interviews of 32
16 individuals to the Prosecutor, Simone Shea, and thus to Plaintiff's criminal counsel
17 for the first time. The archive included the interviews of 20 of the 41 grand jury
18 witnesses. This disclosure occurred during Plaintiff's trial, 2 years after the
19 recorded interviews and the grand jury proceeding. These recordings individually
20 and cumulatively contained exculpatory and impeachment evidence. In
21 withholding these recordings from the grand jury, Defendants procured a grand
22 jury indictment by fraud, corruption and wrongful conduct in bad faith and acted
23 with reckless disregard for the clearly established constitutional rights of Plaintiff.
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COMPLAINT FOR DAMAGES

1 But for the cumulative impact of Defendants' suppression of exculpatory and/or
2 impeachment evidence before the grand jury as detailed hereinbelow, there is a
3 reasonable likelihood and probability that the judgment of the grand jury would
4 have been different, and in favor of Plaintiff.
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6 **B. The False DCFS Complaint and the Suppressed Archive of**
7 **Recordings**

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9 18. Two female teacher colleagues of Plaintiff anonymously made a
10 complaint to DCFS immediately upon learning Plaintiff's teaching contract had
11 been renewed for a second year. Said complaint was forwarded to the El Segundo
12 Police Department. ESPD and Defendants TAVERA, GARCIA and GARZA
13 assigned Defendant HUMPHREY to investigate the complaint. Defendant
14 HUMPHREY, under the direct supervision of Defendant GARZA and others,
15 began investigating said anonymous complaint. The complaint alleged that (1)
16 Plaintiff had touched students by "drawing young boys into his lap open legs,
17 massaged their necks or touches them for no reason at all;" (2) that Plaintiff had
18 taken a "particular liking to a male student as evidenced by eating lunch with him
19 alone, going to the child's sporting events unannounced and uninvited, and parking
20 outside of the child's home;" and (3) that Plaintiff "touched a 7-year old boy
21 inappropriately by rubbing the boy's back and buttocks over his clothing", and that
22 Plaintiff had "put his nose close to the boy's nose and rubbed noses with the boy."
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1 19. Defendants HUMPHREY and GARZA identified the two DCFS
2 complainants. Defendants received information revealing complainants' bias
3 against Plaintiff because complainants perceived him to be gay. Defendants
4 HUMPHREY and GARZA then arranged for Plaintiff to be placed on mandatory
5 leave from his teaching position. Defendants, after conferring with Plaintiff's
6 teaching colleagues and others found no evidence that Plaintiff had committed any
7 crime. Defendants HUMPHREY, GARZA, ATKINSON, GARCIA and TAVERA
8 should have ended the inquiry against Plaintiff then.
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12 Defendant HUMPHREY, GARZA, ATKINSON, GARCIA and TAVERA
13 slandered Plaintiff and suppressed exculpatory evidence. Their actions and
14 intentional omissions wrongfully caused Plaintiff loss of his gainful employment as
15 a teacher, damage to his reputation and loss of his liberty. Defendants acted in
16 reckless disregard for Plaintiff's clearly established constitutional rights to
17 intentionally discriminate against him because of Plaintiff's sexual orientation, and
18 to deprive him of due process. Defendants withheld evidence of bias,
19 impeachment evidence, contradictory and other favorable exculpatory evidence
20 from the grand jury, and thereby procured an indictment by fraud, corruption and
21 wrongful conduct in bad faith and acted with reckless disregard for the clearly
22 established constitutional rights of Plaintiff. There is a reasonable likelihood and
23 probability that but for Defendants' conduct in suppressing the above exculpatory
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COMPLAINT FOR DAMAGES

1 and impeachment evidence, the judgment of the grand jury would have been
2 different and in favor of Plaintiff as described more particularly below.

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4 *Suppressed Evidence of DCFS Alleged Victim Josh P.*

5 20. The Grand Jury heard testimony from Josh P., Josh P.'s mother, Josh
6 P.'s teacher, Ann Leonard, and faculty member Donna Scaltrito that Plaintiff had
7 eaten lunch with Josh P., attended Josh P.'s sporting event and had been on Josh
8 P.'s street. Defendants intentionally omitted exculpatory evidence for the
9 impeachment of these witnesses material to the issues before the jury. The jury
10 was thereby wrongfully guided to conclude that Plaintiff acted with sexual intent
11 toward Josh P. Through this testimony, the groundwork was laid for the inference
12 of Plaintiff's sexual intent toward all other alleged victims who were brought
13 forward. Defendants suppressed information from Josh P., teachers Ann Leonard
14 and Donna Scaltrito as described hereinbelow.

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19 21. On or about September 11, 2012, Defendants HUMPHREY and
20 GARZA secretly recorded an interview of Josh P. in which he provided
21 exculpatory information, to wit, that he had "no concerns about [Plaintiff] at all."
22 Josh P. denied Plaintiff had ever said or done anything that made him feel
23 uncomfortable; and he denied that Plaintiff had ever touched him inappropriately.
24 In his interview, Josh P. told defendants HUMPHREY and GARZA that Plaintiff
25 showed no abnormal interest in him. Josh P. also said that he was in Plaintiff's
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1 before-school math intervention class where Plaintiff frequently brought breakfast
2 for all the students, including the females. Josh P. also explained why Plaintiff was
3 seen on his street: there was a school field trip which included a walk by students
4 on a path which included the street where he lived, and that Plaintiff was en route
5 from the elementary school to the high school for the field trip. Josh P. also
6 explained that Plaintiff had eaten lunch with him on campus, and this occurred
7 because he was having a “really rough time.”
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10 22. Defendant HUMPHREY and GARZA intentionally suppressed their
11 interview of Josh P.; they omitted entirely from their police report any mention that
12 they had conducted that interview. It was not until September 25, 2015, 10 days
13 after Plaintiff’s criminal trial began - almost two years after the grand jury
14 proceedings were completed- that defendants provided the exculpatory recording
15 of Josh P.’s interview to Plaintiff’s criminal defense counsel.
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19 23. Defendants HUMPHREY and GARZA kept from the grand jury
20 further exculpatory evidence they had received from teacher Ann Leonard
21 respecting Josh P. This evidence consisted of an August 16, 2012 secret recording
22 of teacher Ann Leonard, where she provides the information that Plaintiff had been
23 directed by another teacher to “reach out” to Josh P. Defendants misled the grand
24 jury about why Plaintiff had lunch with Josh P., fostering the false inference that
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1 Plaintiff had a sexual intent and was eating lunch with Josh P. for that reason,
2 rather than that he was only following directions.

3 24. On or about August 22, 2012, Defendant ATKINSON together with
4 Defendant GARZA secretly recorded an interview with teacher Donna Scaltrito.
5 This recording was not provided to Plaintiff's defense counsel until after the
6 commencement of Plaintiff's criminal trial, in September, 2015. Scaltrito told the
7 defendants that she was one of the two DCFS anonymous complainants. In this
8 recording, Scaltrito explained that teachers ordinarily would be invited to off-
9 campus functions and events of students, including Little League games.
10 Defendants suppressed evidence that Plaintiff's attendance at such events was
11 normal behavior for teachers. This perspective would have refuted the inference
12 that Plaintiff had a sexual motive for attending sports events of students, including
13 Josh P.
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15 25. Defendant HUMPHREY and GARZA's suppression of the above
16 exculpatory information provided a misleading context for the subsequent
17 testimony of grand jury witness Tina P., mother of Josh P. Tina P. reiterated
18 Plaintiff's actions which the jury heard without the exculpatory explanations that
19 should have been presented. Defendants' concealment of the exculpatory
20 explanations for Plaintiff's conduct reinforced false inferences as to Plaintiff's
21 sexual intent.
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COMPLAINT FOR DAMAGES

1 26. In suppressing the secret exculpatory tapes of Josh P., Ann Leonard,
2 Donna Scaltrito and Tina P., as described above, Defendants HUMPHREY,
3 ATKINSON, GARZA, GARCIA and TAVERA fraudulently, corruptly, wrongfully,
4 and in bad faith procured an indictment against Plaintiff by withholding material
5 and exculpatory evidence from the grand jury including the false and misleading
6 accusations of Plaintiff having a sexual interest in Josh P. thus creating spillover
7 prejudice that Plaintiff had a sexual interest in the other boys at issue before the
8 grand jury. There is a reasonable likelihood and probability that without
9 Defendants' suppression of the exculpatory and/or impeachment evidence herein,
10 the judgment of the grand jury would have been different, and in favor of Plaintiff.
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12 *Suppressed Evidence of DCFS Alleged Victim - Danny B.*
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14 27. Grand jurors heard evidence concerning Danny B., whom Defendants
15 HUMPHREY, ATKINSON and GARZA identified as one of the subjects of the
16 DCFS complaint. Grand jurors heard false evidence that Plaintiff had sexual intent
17 toward Danny B. This evidence was presented through the grand jury testimony of
18 teachers Donna Scaltrito and Rashell LeMay. Defendants suppressed exculpatory
19 witness information from Peggy B., Danny's mother. Defendants suppressed
20 secret recordings containing exculpatory impeachment evidence, and evidence of
21 bias of these teachers. Defendants concealed favorable witness Peggy B. who had
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1 told defendants she had sought out Plaintiff to tutor her son, rather than Plaintiff
2 initiating such contact.

3 28. On or about August 22, 2012, Defendant ATKINSON together with
4 supervisor GARZA secretly recorded an interview of teacher Donna Scaltrito.
5 Said recording was not provided to Plaintiff's trial counsel until after the
6 commencement of Plaintiff's in-progress jury trial, almost 2 years after the grand
7 jury. On said recording Scaltrito, one of the two DCFS complainants, identified
8 student Danny B. as a boy Plaintiff may have touched referred to in her DCFS
9 complaint. Scaltrito's recording revealed that: 1) she harbored ill will toward
10 Plaintiff; 2) She described him as "arrogant" and "flamboyant"; 3) She alluded to
11 Plaintiff being homosexual; 4) Scaltrito said that she didn't want Plaintiff to return
12 to teach; and 5) She said that Danny B's family "loved" Plaintiff and sought him
13 out, thus refuting the assertion that Plaintiff sought out Danny B. and which
14 showed that Plaintiff did not prey on Danny B. Defendants concealed Scaltrito's
15 information from the grand jury, thereby allowing the jury to form the false
16 impression that Plaintiff initiated contact with and sought out Danny B., again
17 imputing sexual intent of Plaintiff toward Danny B. and other boys the subject of
18 the grand jury.

19 29. On August 16, 2012, Defendants HUMPHREY and GARZA secretly
20 recorded an interview of teacher Rashell LeMay. This recording was not provided
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COMPLAINT FOR DAMAGES

1 to Plaintiff's counsel until September, 21, 2015 after Plaintiff's trial was in-
2 progress. This recording was exculpatory, in that it revealed LeMay's homophobia;
3 and that Danny's mother's pursued Plaintiff to be her son's tutor.
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5 30. On August 23, 2012, Defendants ATKINSON and GARZA secretly
6 recorded an interview of Peggy B. Peggy B. is the mother of Danny B. Defendants
7 HUMPHREY and GARZA hid this recorded interview of Peggy B. and did not
8 provide it to Plaintiff's defense counsel until his criminal trial was in progress. This
9 recording contained exculpatory information, that Plaintiff tutored Danny B. at
10 Peggy's request, and that it was Peggy, not Plaintiff, who requested that Danny B.
11 be reassigned to Plaintiff's class. Defendants created the false impression that
12 Plaintiff was preying on Danny B. and possessed sexual intent as to him and
13 therefore, as to other boys at issue before the grand jury.
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17 31. In hiding the secret exculpatory recordings of Scaltrito, LeMay and
18 Peggy B. as described above, Defendants misled the grand jury that Plaintiff
19 sought out Danny B. Defendants HUMPHREY, ATKINSON and GARZA and
20 other supervisors fraudulently, corruptly, wrongfully, and in bad faith procured an
21 indictment against Plaintiff by withholding material, and exculpatory and
22 impeachment evidence from the grand jury, thereby depriving Plaintiff of his
23 clearly established constitutional rights. In withholding this evidence from the
24 grand jury, Defendants misled the grand jurors to believe Plaintiff had a sexual
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COMPLAINT FOR DAMAGES